insolvent would probably be held responsible to see that it actually reached the trustee. Such a surrender before the filing of the petition, however, would seem to be sufficient to release the preferred creditor from further liability. The present bankruptcy law gives no indication to the contrary, and even allows a preferred creditor who gives the debtor further credit for property which becomes a part of the debtor's estate a set-off to that extent against the amount recoverable by the trustee. BANKRUPTCY ACT OF 1898, § 60 *c*. Moreover, it is unnecessary to show that such new credits remain a part of the debtor's estate at the time of adjudication. *Kaufman* v. *Tredway*, 195 U. S. 271. On similar principles, *bonâ fide* surrenders to the debtor before the petition is filed should be protected, although as a practical matter a creditor would ordinarily hold his preference until forced to give it up. The result reached in the principal case is also in harmony with the general purpose of the Bankruptcy Act. Although there was a technical preference, still no one creditor would obtain a greater percentage of his debt out of the estate than any other. See *Gans* v. *Ellison*, 114 Fed. 734, 737.

BANKRUPTCY — PROCEDURE AND PRACTICE — DISMISSAL OF VOLUNTARY PROCEEDINGS BY CONSENT AFTER ADJUDICATION. — After being adjudicated a bankrupt on a voluntary petition, the debtor, with the consent of all his creditors, moved that the proceedings be dismissed. *Held*, that the motion be refused. *Matter of McKee*, 214 Fed. 885, 32 Am. B. R. 731 (Dist. Ct., N. D., Tex.).

Section 18 *g* of the present bankruptcy act provides that upon the filing of a voluntary petition, the judge shall either "make the adjudication or dismiss the petition." This provision, however, becomes inoperative after the adjudication, which is the final decree on the petition. See *In re Hecox*, 164 Fed. 823, 825. The adjudication itself may be set aside by the court on proof of some flaw in jurisdiction. *In re New England Breeder's Club*, 165 Fed. 517. But except for this general power, the statute specifically provides for the revesting of title in the bankrupt only upon the confirmation of a composition agreement offered by the bankrupt, accepted by a majority of the creditors, and administered under the direction of the court. BANKRUPTCY ACT OF 1898, §§ 12, 70 *f*. Under practically uniform provisions in the act of 1867, it was held that an application for dismissal after adjudication came too late, and that a composition agreement was the only proper method. *In re Sherburne*, Fed. Cas., No. 12,758. An amendment subsequently provided expressly for the bankrupt's regaining both the title and control of his property in the manner desired in the principal case. BANKRUPTCY ACT OF 1874, § 14. As a matter of history, however, the frauds practiced by bankrupts in collusion with powerful creditors under cover of this section led to the repeal of the entire statute. The omission of the provision from the present act seems significant, and proper statutory construction therefore requires the same result that was reached under the former statute, before the amendment.

BANKRUPTCY — PROPERTY PASSING TO TRUSTEE — EFFECT OF 1910 AMENDMENT IN STATES WHERE DOWER IS CHATTEL FOR PAYMENT OF HUSBAND'S DEBTS. — By the local law of Pennsylvania the right of dower was made a chattel for payment of the husband's debts. The referee in bankruptcy now certifies to the court the question whether a trustee in bankruptcy can sell the bankrupt's realty free from the wife's right of dower. *Held*, that he cannot. *Matter of Chotiner*, 216 Fed. 916, 32 Am. B. R. 760 (Dist. Ct., W. D., Pa.).

Under the Pennsylvania law, judgment creditors of the husband could reach the wife's dower right by levying execution upon the land. *Directors of the Poor* v. *Royer*, 43 Pa. 146. Formerly it was held that this right did not pass to the trustee in bankruptcy. *In re Schaeffer*, 105 Fed. 352, 5 Am. B. R. 248; *Porter* v. *Lazear*, 109 U. S. 84. The 1910 amendment to § 47 *a* (2),

however, provides that as to property in the custody of the court, the trustee shall be vested with "the rights, remedies, and powers of a credit or holding a lien by legal or equitable proceedings thereon." It would seem to follow that the trustee acquired an execution creditor's lien on the land of the bankrupt and could enforce it, in accordance with the local law, to the exclusion of the wife's right of dower. *In re Codori*, 207 Fed. 784, 30 Am. B. R. 453. The primary aim of this amendment was to prefer the trustee to the vendor in an unrecorded conditional sale. See 28 HARV. L. REV. 204. The principal case, however, seems to fall equally within its purpose, for in both situations a third person has rights to property in the possession of the bankrupt which the latter's creditors can defeat by appropriate proceedings. If the decision is to be supported, therefore, it must be on the narrow ground that technical requirements of the Pennsylvania statute, with reference to inquisition by the sheriff and the like, were not satisfied, and could not be waived by the trustee. PENNSYLVANIA, P. L. 1836, 769, §§ 48 *ff.*

BANKS AND BANKING — DEPOSITS — RIGHTS OF DEPOSITORS: EFFECT OF FAILURE TO NOTIFY BANK OF A FORGED INDORSEMENT. — A depositor discovered that the bank had charged to his account a check paid by it on a forged indorsement, but failed to notify the bank within a reasonable time. The bank proved no prejudice from his failure to notify promptly. The depositor now seeks to recover the amount of the check from the bank. *Held*, that he cannot recover. *Connors* v. *Old Forge Discount & Deposit Bank*, 91 Atl. 210 (Pa.).

An unauthorized payment by a bank cannot, in general, be charged to the depositor's account. *Welsh* v. *German American Bank*, 73 N. Y. 424. But the depositor owes a duty to the bank, arising from the relation, to examine returned vouchers and report forgeries as soon as discovered. *First National Bank* v. *Allen*, 100 Ala. 476, 14 So. 335; *Dana* v. *First National Bank of the Republic*, 132 Mass. 156. See EWART, ESTOPPEL, p. 41. Silence in the face of such a duty to speak will form the basis for an estoppel. See *Freeman* v. *Cooke*, 2 Ex. 654, 663. But estoppel is equitable in its nature and actual damage to the bank should be required to estop the depositor. *Pratt* v. *Union National Bank*, 79 N. J. L. 117, 75 Atl. 313; *Wind* v. *Fifth National Bank*, 39 Mo. App. 72. See EWART, ESTOPPEL, p. 133. The principal case, however, is not alone in holding that this estoppel will be available without affirmative proof of prejudice to the bank. *Merchants' Bank* v. *Lucas*, 13 Ont. R. 520; *Findley* v. *Corn Exchange National Bank*, 166 Ill. App. 57; *McNeely Co.* v. *Bank of North America*, 221 Pa. 588, 70 Atl. 891. Even without the elements of a complete estoppel, the principal case may perhaps be supported on the ground that a binding account stated between the parties arose from the depositor's assent to the statement of accounts and balance, presumably rendered by the bank shortly before the discovery of the forgery. In view of business usage, this statement amounts to an offer by the bank to the depositor to set off the mutual debts. See *Leather Manufacturers' Bank* v. *Morgan*, 117 U. S. 96, 106. LANGDELL, BRIEF SURVEY OF EQUITY JURISDICTION, 2 ed., 115. The failure of the depositor to object to the balance after a reasonable time may then be interpreted as an assent to the account stated, because of the duty imposed on the depositor from his relation to the bank to examine the bank book and vouchers, and report errors. *Devaynes* v. *Noble*, 1 Mer. 529, 535, 610; *Schoonover* v. *Osborne*, 108 Ia. 453, 79 N. W. 263. See *Sherman* v. *Sherman*, 2 Vern. 276; *Leather Manufacturers' Bank* v. *Morgan, supra;* PAGET, LAW OF BANKING, 2 ed., 150 *et seq.* This stated account would be conclusive on the depositor in the absence of fraud or mistake, neither of which appeared in the principal case, for the depositor had full knowledge of the forgery at the time his assent is to be inferred. *Austin* v. *Ricker*, 61 N. H. 97; *cf. Leather Manufacturers' Bank* v. *Morgan, supra.*